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M.F., Appellant)	
)	
and)	Docket No. 13-1356
)	Issued: February 10, 2014
U.S. POSTAL SERVICE, POST OFFICE,)	
Sunnyvale, CA, Employer)	
)	

Case Submitted on the Record

Before:
RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

On May 20, 2013 appellant, through her representative, filed a timely appeal from the December 31, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant met her burden of proof to establish that she sustained an emotional condition in the performance of duty.

On February 1, 2012 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 20, 2012 at 5:00 p.m. she experienced stress due to

¹ 5 U.S.C. §§ 8101-8193.

sexual harassment by a coworker, Juanito Rivera.² She stopped work on January 31, 2012. The employing establishment controverted the claim on the grounds that the reported incident occurred off the employing establishment's premises and after appellant's work shift had ended. It noted appellant's work tour as 7:00 a.m. to 4:00 p.m., Monday through Thursday, and Saturday.

In a February 6, 2012 letter, the employing establishment asserted that the claimed incident occurred off duty and after hours. Postmaster John Silberberg stated that on January 20, 2012 appellant was off duty. He submitted an attendance record printout showing that she was not scheduled to work on January 20, 2012. Postmaster Silberberg stated that appellant told him that the alleged incident with Mr. Rivera occurred at her home.

In a February 13, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim.

In a February 21, 2012 statement, appellant alleged that Mr. Rivera sexually harassed her by personal contact as well as text messages, and that most of these incidents occurred when "I was in the performance of my duty as a letter carrier either on the employer's premises or out on my route delivering mail." She submitted printouts of text messages that she characterized as sexual and harassing in nature.³ Appellant was the named recipient of the messages and the sender was identified by a telephone number. The messages included "I don't like somebody changing your name to Claudia" (transmitted October 26, 2011, 5:30 p.m.); "stop by Hillsdale Starbucks if u have time" (November 11, 2011 4:32 p.m.); "I will always love you" (November 12, 2011, 12:36 p.m.); "sorry for bothering you... I have abused too much goodbye" (November 12, 2011, 2:17 p.m.); "I will stay away from you" (November 12, 2011, 3:41 p.m.); and "happy Thanksgiving" (November 24, 2011, 2:20 p.m.).

Appellant alleged multiple sexual harassment incidents by Mr. Rivera occurring between June 2010 and January 20, 2012. She alleged that Mr. Rivera asked personal questions about her health and vacation plans; used her delivery truck when she was on leave, and cleaned the truck inside and outside. Mr. Rivera wrote her name on his mail hamper with a black marker and told her that he knew her personal car license number. In January 2011, appellant spoke to coworkers Wayne Purdy and Craig Bragg about Mr. Rivera. After this, Mr. Rivera posted a sign on his mail case referring to appellant as an ex-girlfriend, a devil and a traitor. Appellant alleged that in February 2011 she was with her daughter at a Starbucks coffee shop on her way to work when she saw Mr. Rivera parked nearby. In May 2011, Mr. Rivera followed her after work when she picked up her daughter or went shopping. In June 2011, he followed appellant, mostly on Saturdays, driving different rental cars. Appellant claimed that in July 2011 Mr. Rivera showed up on her mail route, offering a juice drink and, on July 31, 2011, he passed her on the road and honked his horn. In October 2011, she received a new mail route and Mr. Rivera showed up at the route. In November 2011, appellant returned to her old mail route and Mr. Rivera appeared

² The claim was treated as a claim for an occupational disease rather than a traumatic injury because appellant alleged incidents occurring over more than one workday or shift.

³ The record also contains photographs depicting the text messages.

on the route. She alleged that Mr. Rivera often came to an apartment complex where she delivered mail to the extent that the complex manager noticed that she was upset.

Appellant alleged that in November 2011 Mr. Rivera texted her that he was her neighbor. In November or December 2011, Mr. Rivera moved into a house in appellant's neighborhood and parked his car next to her house. In December 2011, appellant and Ivan Christomo, a coworker, spoke with Mr. Rivera at the employing establishment. She made it clear to Mr. Rivera that she did not want him in her neighborhood and that he should stay away from her. Appellant alleged that Mr. Rivera screamed at her and Mr. Christomo and that he did not stay away as she had requested. On December 13, 2011 she and Mr. Christomo reported to Postmaster Silberberg their recent conversation with Mr. Rivera. On December 14, 2011 Postmaster Silberberg told Mr. Rivera to stay away from appellant and to park his postal truck away from where she parked her truck. He told appellant that he would refer the matter to the employing establishment inspectors. Appellant alleged that on December 15, 2011 Mr. Rivera was standing nearby as she was preparing to leave the employing establishment. She reported the matter to Mr. Silberberg, who interviewed Chit Wo To, a coworker. Mr. Silberberg also interviewed Mr. Purdy and Mr. Bragg. On December 22, 2011 an envelope containing money and the notation "friends forever" was left at a mailbox on her route. Appellant contended that Mr. Rivera attempted to give her Christmas and birthday gifts.⁴ She claimed that in January 2012 the postal inspectors from the Office of the Inspector General (OIG) interviewed Mr. Rivera and other employees. Appellant alleged that Mr. Rivera continued to park his postal truck next to her truck despite the postmaster's instructions not to park there. On January 6, 2012 at 7:00 p.m. Mr. Rivera was at her house when she arrived home and that he screamed at her. Appellant stated that she spoke with OIG inspectors about Mr. Rivera in January 2012, but he continued to bother her. She alleged that on January 19, 2012 at about 6:00 p.m. Mr. Rivera crossed in front of her as she was exiting the employing establishment.

A January 6, 2012 report of the South San Francisco Police contains an allegation by appellant that Mr. Rivera yelled at her and was stalking her, but the document does not contain any official findings. The record also contains a March 20, 2012 stipulation and order, voluntarily entered into by appellant and Mr. Rivera, which dictated that the two would not have any communications or meetings with each other. The document indicated that neither party acknowledged past liability or fault.

In a February 22, 2012 statement, Mr. Bragg stated that he spoke to Mr. Rivera about appellant filing a complaint against him for sexual harassment and noted that he saw Mr. Rivera park his vehicle behind that of appellant. He noticed Mr. Rivera going back and forth at the parking lot at 6:00 p.m. before appellant returned from street delivery. Mr. Bragg opined that Mr. Rivera seemed obsessed with appellant. In a February 23, 2012 statement, Ms. To stated that she saw Mr. Rivera wash appellant's delivery truck a few times when she was on vacation. She stated that Mr. Rivera asked her about appellant's vacation plans and that appellant told her Mr. Rivera had asked her questions and followed her on the freeway.

⁴ The record contains a photograph of an envelope bearing the words "forever friend" with \$30.00 in bills next to it. Another photograph depicts a birthday card addressed to "Maya" with \$50.00 in bills next to it.

In a February 22, 2012 statement, Mr. Christomo stated that on December 6, 2011 he told Mr. Rivera to stay away from appellant. He spoke with Postmaster Silberberg on December 16, 2011 about appellant's problems with Mr. Rivera, including the text messages. Postmaster Silberberg later informed Mr. Christomo and appellant that he had referred the matter to the OIG. Mr. Christomo stated that on December 22, 2011 appellant showed him an envelope with money she found in a mailbox on her route. He noted that the envelope was found inside a locked mailbox and that only someone with access to the box key could have left the envelope there.

A February 27, 2012 OIG investigative memorandum addressed Mr. Rivera's conduct. Inspector Brian J. Codianne stated that he interviewed Mr. Rivera, Francisco Zialcitta, a coworker who carpooled with Mr. Rivera, and Wayne Yuen, manager of a Hertz rental car agency in South San Francisco where Mr. Rivera was also employed. He noted that Mr. Rivera stated that he lived in Stockton but also had a residence in San Francisco because he had a job there. Mr. Rivera stated that he and appellant were friends. He indicated that his wife's son from a previous marriage rented an apartment in the vicinity of appellant's home, where Mr. Rivera resided from November 30 to December 14, 2011. Mr. Rivera stated that living near appellant was a coincidence. He denied that he was in the vicinity of her home on January 6, 2012, noting that on such date he worked at the employing establishment and then picked up his brother at the airport before returning to Stockton. Mr. Rivera denied ever threatening appellant. The Hertz records showed that Mr. Rivera was performing work for Hertz out of town on January 20, 2012. Mr. Zialcitta indicated that he carpooled with Mr. Rivera between Stockton and San Francisco two to three days a week, but they did not carpool on days when Mr. Rivera worked in San Francisco. Mr. Zialcitta kept a log of carpool trips which indicated that Mr. Rivera carpooled with him beginning December 28, 2011. Mr. Rivera did not carpool on January 6, 2012. Inspector Codianne also interviewed Walter Ernst, a Hertz employee, who verified that on January 20, 2012 Mr. Rivera worked at Hertz. Mr. Ernst recalled the occurrence of a large storm on that date and Inspector Codianne checked weather data for January 20, 2012 which confirmed Ernst's recollection. OWCP also received reports by Dr. George D. Karalis, an attending Board-certified psychiatrist, who diagnosed depression and anxiety.

In a July 13, 2012 decision, OWCP denied appellant's emotional condition claim. It found that she had not established any compensable work factors. OWCP noted that the witness statements did not clearly establish the claimed harassment by Mr. Rivera.

Appellant requested a hearing before an OWCP hearing representative. At the October 22, 2012 hearing, she was represented by counsel. Dr. Karalis and Mr. Christomo also testified. Appellant testified that Mr. Rivera visited her on her postal route and sent her text messages. She testified that most of the messages were sent and received during work hours. Appellant believed that the text messages were sexual in nature and that she was a victim of sexual harassment. On one occasion while she was delivering mail at an apartment complex, Mr. Rivera attempted to hug her. Appellant pushed Mr. Rivera away and that the apartment manager came out from her office and asked appellant if she was OK or needed help. She testified that Mr. Rivera had a delivery route about 15 minutes from her own route and that he visited her while she delivered mail. Appellant asked Mr. Christomo to tell Mr. Rivera to stop visiting her on her route or asking her out socially. She and Mr. Christomo spoke with Mr. Silberberg on December 13, 2011 and told him about Mr. Rivera's conduct. Appellant

denied any prior or current personal relationship with Mr. Rivera and noted that they were only coworkers.

Mr. Christomo testified that he was a union steward at the employing establishment. Appellant told him about the problems she had with Mr. Rivera, including text messages. He testified that appellant showed him text messages received on her cell phone which were sent by Mr. Rivera. Mr. Christomo and appellant spoke with Mr. Rivera on December 6, 2011 in the employing establishment parking lot but he did not acknowledge appellant's complaints. Mr. Christomo brought the matter to the attention of Postmaster Silberberg and that the reaction by management was to "play down" appellant's complaints. He stated that Mr. Rivera was issued a 14-day suspension, but Mr. Christomo was unsure whether the suspension was based on conduct regarding appellant. Mr. Christomo testified that, at a meeting, Mr. Silberberg told Mr. Rivera to stop sending messages to appellant. Dr. Karalis testified that appellant showed him the text messages submitted to the record and stated that they appeared to be sexual in nature or sexually oriented. He opined that such messages, the personal contact between Mr. Rivera and appellant, and Mr. Rivera washing appellant's postal truck were all upsetting to her and caused major depression. Counsel stated that an unsigned witness statement of December 27, 2011 was by Mr. Purdy and had originally been submitted in connection with an Equal Employment Opportunity (EEO) complaint filed by appellant. Counsel was advised to obtain a signed copy of the statement.

The record was held open for 30 days to allow for the submission of additional evidence. A copy of the transcript was provided to the employing establishment and 20 days allowed for the submission of written comments.

On November 26, 2012 Postmaster Silberberg stated that appellant's complaints about Mr. Rivera were brought to his attention on December 20, 2011 and he immediately took action. Mr. Rivera was disciplined for unauthorized route deviations and washing of vehicles, as well as unwelcome visits to other carriers on their routes. Mr. Silberberg was not previously apprised of contact between Mr. Rivera and appellant dating back to June 2010. He placed Mr. Rivera on notice to stay away from appellant and warned him of the consequences if he failed to follow instructions, including disciplinary action. Mr. Silberberg stated that there was no evidence that Mr. Rivera failed to follow his instructions. Appellant's testimony that Mr. Rivera tried to hug her was never brought to him or through an EEO complaint. Mr. Silberberg acknowledged that Mr. Rivera sent text messages to appellant, but opined that such messages were not sexually suggestive and would not offend a reasonable person. Lester Anderson, a customer service supervisor, stated that Mr. Rivera was suspended for 14 days for deviating from his route, washing postal vehicles without authorization to do so, and for unwelcome visits to other carriers' routes, including appellant's route. The discipline against Mr. Rivera was based in part on appellant's complaints.

The employing establishment submitted a copy of a March 29, 2012 disciplinary notice. Mr. Rivera was suspended for 14 days on a charge of unacceptable conduct. He admitted deviating from his route to assist other carriers to complete their duty assignments and also washing their postal vehicles without prior approval. The employing establishment noted that section 131.13 of the M-41 labor handbook stated that a letter carrier should not deviate from the route for meals or other purposes unless so authorized by a manager.

In an EEO affidavit dated June 29, 2012, Mr. Silberberg stated that Mr. Rivera admitted he visited appellant on her delivery route, but his purpose was to assist her. He denied speaking with appellant and Mr. Christomo on December 13, 2011 about Mr. Rivera and stated the complaints about Mr. Rivera were brought to him by appellant initially on December 20, 2011. In March 2012, appellant brought to his attention that she had requested a restraining order against Mr. Rivera.

In an April 26, 2012 document, OIG Inspector Codianne memorialized an interview with Lesha Williams, manager of Aster Park Apartments. Ms. Williams stated that in late 2011 she saw two employing establishment vehicles at her complex and two letter carriers, one male and one female. She thought nothing about seeing the two carriers and assumed they were delivering mail to the complex. Ms. Williams did not see any altercation involving the carriers. She did not speak with either one and stated that around Christmas 2011 the female carrier asked her if she had given her any money in an envelope as a gift. Ms. Williams responded no, and the carrier related that she was having problems with another carrier who she thought was following her at work. She advised the inspector that she did not see any stalking or altercation between the letter carriers at the apartment complex.

In a June 26, 2012 EEO affidavit, Mr. Rivera denied that he was at a Starbucks in February 2011 when appellant was there. He denied he was at a Macy's department store in May 2011 when appellant was there, noting that at such time he was in a carpool with Annel Chaimian. Mr. Rivera denied using different cars to follow appellant on Saturdays in June 2011. He stated that every Saturday he worked between 7:30 a.m. and 4:00 p.m. and then travelled to Stockton with his wife. Mr. Rivera denied stalking appellant; acknowledged sending her a text on November 24, 2011 wishing her a Happy Thanksgiving, but denied any malicious intent. He also stated that November 24, 2011 was the last time he texted appellant. Mr. Rivera acknowledged that he told appellant that he was her neighbor, but only in a friendly way. He denied standing at the employing establishment parking lot on December 15, 2011, noting that on that date he attended his sister's funeral in Sacramento. On December 21, 2011 Mr. Rivera clocked out from work at 5:30 p.m. and left immediately to pick up his wife in San Francisco and they went to his sister-in-law's residence in that city. He acknowledged that he showed up on appellant's route in November 2011, but was only there in response to her request for assistance with delivery tasks. Mr. Rivera stated that he agreed to help appellant on her route if he could complete his own route in time to do so.

In an EEO affidavit dated June 26, 2012, Mr. Purdy stated that on December 21, 2011 he saw Mr. Rivera in the employing establishment parking lot around 6:00 p.m. He opined that a "friendship went bad" between appellant and Mr. Rivera. Mr. Purdy stated that he had known Mr. Rivera for 13 years. He noted that Mr. Rivera was helpful and well-liked at work. Mr. Purdy stated that Mr. Rivera was a "young single man" who appeared to be interested in more than friendship with appellant. Appellant told him of her allegations about Mr. Rivera. Mr. Purdy stated that he did not know whether appellant found Mr. Rivera's conduct unwelcome. In a June 27, 2012 EEO affidavit, Mr. Bragg stated that he worked with appellant for 25 years and with Mr. Rivera for 10 years. He characterized Mr. Rivera's conduct toward appellant as "overly friendly" inasmuch as appellant told him that Mr. Rivera sent her notes expressing love. Mr. Bragg stated that appellant told him that Mr. Rivera's conduct was unwelcome.

In a December 13, 2012 reply, counsel contended that, as per Dr. Karalis' testimony, the text messages that Mr. Rivera sent to appellant were sexual in nature. He submitted a December 12, 2012 statement by Mr. Christomo who noted that he and appellant met with Mr. Silberberg before December 16, 2011 to address her concerns about Mr. Rivera's conduct. Counsel argued that the employing establishment did not promptly discipline Mr. Rivera following such meeting, and also failed to disclose to appellant documents related to her EEO complaint.

In a December 31, 2012 decision, OWCP's hearing representative affirmed OWCP's July 13, 2012 decision, finding that the additional evidence added to the record did not establish any compensable work factors.

LEGAL PRECEDENT

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.⁵ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.⁶

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA.⁷ However, the Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.⁸ In determining whether the employing establishment has erred or acted abusively, the Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.⁹

To the extent that disputes and incidents alleged as constituting harassment and discrimination by supervisors and coworkers are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.¹⁰

⁵ *Lillian Cutler*, 28 ECAB 125 (1976).

⁶ *Gregorio E. Conde*, 52 ECAB 410 (2001).

⁷ *Matilda R. Wyatt*, 52 ECAB 421 (2001); *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 556 (1991).

⁸ *William H. Fortner*, 49 ECAB 324 (1998).

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994).

¹⁰ *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

However, for harassment or discrimination to give rise to a compensable disability under FECA, there must be evidence that harassment or discrimination did in fact occur. Mere perceptions of harassment or discrimination are not compensable under FECA.¹¹

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which she claims compensation was caused or adversely affected by employment factors.¹² This burden includes the submission of a detailed description of the employment factors or conditions which appellant believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹³

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁴ If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.¹⁵

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between appellant's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete and accurate factual and medical background of appellant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.¹⁶

ANALYSIS

Appellant alleged that she sustained an emotional condition as a result of a number of employment incidents and conditions. OWCP denied her emotional condition claim on the grounds that she did not establish any compensable employment factors. The Board must, thus, initially review whether these alleged incidents and conditions of employment are covered

¹¹ *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991).

¹² *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹³ *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹⁴ *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

¹⁵ *Id.*

¹⁶ *Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

employment factors under the terms of FECA. The Board notes that appellant's allegations do not pertain to her regular or specially assigned duties under *Cutler*.¹⁷ Rather, appellant has alleged error and abuse in administrative matters and harassment by a coworker.

Appellant claimed that Mr. Rivera, a coworker, subjected her to sexual harassment. The employing establishment denied that she was harassed and she has not submitted sufficient evidence to establish that she was harassed by Mr. Rivera within the meaning of FECA.¹⁸ Appellant alleged that Mr. Rivera engaged in actions which she believed constituted harassment, but she provided insufficient corroborating evidence to establish her claim.

The record establishes that Mr. Rivera sent text messages to appellant. However, the text messages of record do not on their face constitute sexual harassment. Moreover, there is no EEO finding of sexual harassment. Mr. Rivera denied any malicious intent in sending the text messages. The content of most of the messages, such as holiday greetings, may be deemed friendly or otherwise innocuous. Although the Board has recognized the compensability of verbal abuse in certain circumstances, this does not imply that every statement uttered in the workplace will give rise to coverage under FECA.¹⁹ One text message expressing affection (a message stating "I will always love you") does not constitute a persistent pattern of harassment. Appellant has not shown how such an isolated comment would rise to the level of sexual harassment or verbal abuse or otherwise fall within the coverage of FECA.²⁰

Moreover, the statements of Mr. Purdy, Mr. Bragg, Ms. To and Mr. Christomo do not corroborate the sexual harassment allegations. The witnesses did not indicate that they witnessed the events alleged by appellant. Opinions by witnesses that Mr. Rivera was "overly friendly" or even "obsessed with" appellant do not establish that harassment occurred as claimed as they are too vague. This testimony does not show that Mr. Rivera followed appellant on the highway or at shops, stores or to other locations. The OIG investigation showed that on most alleged occasions Mr. Rivera was working for the employing establishment or Hertz, or was out of town. Mr. Rivera was not working on January 6, 2012 or engaging in carpooling and he denied being at appellant's residence on such date. The South San Francisco Police report regarding the events of January 6, 2012 does not contain any findings. The record does not establish that Mr. Rivera's presence at the employing establishment parking lot on December 21, 2011 constituted harassment. Mr. Rivera stated that he clocked out at 5:30 p.m. on December 21, 2011 and left immediately. Mr. Purdy saw Mr. Rivera on the lot a half-hour later at 6:00 p.m., but his presence at the employing establishment premises does not constitute harassment. He did not observe Mr. Rivera interacting with appellant in the parking lot on that date.

¹⁷ See *Cutler supra* note 5.

¹⁸ See *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

¹⁹ *Harriet J. Landry*, 47 ECAB 543, 547 (1996).

²⁰ See, e.g., *Alfred Arts*, 45 ECAB 530, 543-44 (1994) and cases cited therein (finding that the employee's reaction to coworkers' comments such as "you might be able to do something useful" and "here he comes" was self-generated and stemmed from general job dissatisfaction). Compare *Abe E. Scott*, 45 ECAB 164, 173 (1993) and cases cited therein (a supervisor's calling an employee by the epithet "ape" was a compensable employment factor).

In addition, harassment has not been established based on Mr. Rivera living in appellant's neighborhood or parking his vehicle near her home. Mr. Rivera explained that his nephew had an apartment in appellant's neighborhood and he stayed there for a time. He stated that he told appellant that they were neighbors in a friendly way. The OIG report showed that Mr. Rivera was not in appellant's vicinity on January 20, 2012 and appellant's allegation about the events of that date covered a time and location when she was off duty. As noted, there is no EEO finding of record that Mr. Rivera's presence in appellant's neighborhood at times was sexual harassment. The record does not support appellant's allegation that Mr. Rivera placed an envelope containing money in a locked apartment mailbox on her route. Mr. Rivera denied the allegation and Ms. Williams, the apartment manager, did not corroborate it. The record does not contain an EEO finding that Mr. Rivera placed the envelope and money in the mailbox or that Mr. Rivera wrote or placed derogatory notes or signs about appellant at the employing establishment.

Appellant's reaction to Mr. Rivera's route deviations and washing her postal vehicle are not compensable employment factors. The employing establishment disciplined Mr. Rivera for such actions, but it based this action on general violation of service regulations rather than as a form of harassment. The evidence does not establish that Mr. Rivera tried to hug appellant at an apartment complex on her route. Ms. Williams stated that she observed two letter carriers at the apartment complex, without seeing anything unusual occur. In sum, the evidence of record does not establish that Mr. Rivera harassed appellant or otherwise establish the existence of such alleged harassment.²¹ On appeal, counsel cited various Board cases dealing with harassment and stalking of coworkers, but the evidence submitted to the record does not substantiate appellant's allegations. For these reasons, appellant has not established a compensable employment factor under FECA with respect to her claims regarding harassment by Mr. Rivera.

Appellant alleged that the employing establishment erred by not disciplining Mr. Rivera. Such administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employer rather than the regular or specially assigned work duties of the employee and are not covered under FECA. The Board has held that, where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.²² Appellant has not established her allegations that the employing establishment failed to discipline Mr. Rivera in a timely manner or failed to disclose EEO documents. The employing establishment suspended Mr. Rivera for 14 days for violations of service regulations. The record does not contain a grievance or EEO finding that such discipline was untimely or improper. The record does not contain any grievance or EEO finding regarding administrative matters and appellant has not otherwise established her claim that management committed error or abuse in these administrative matters.

²¹ The record contains a March 20, 2012 stipulation and order, voluntarily entered into by appellant and Mr. Rivera, which dictated that the two would not have any communications or meetings with each other. However, the document indicated that neither party acknowledged past liability or fault.

²² See *supra* notes 7 through 9.

For the foregoing reasons, appellant has not established any compensable employment factors under FECA and, therefore, has not met his burden of proof in establishing that he sustained an emotional condition in the performance of duty.²³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an emotional condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the December 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 10, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

²³ As appellant has not established any compensable employment factors, the Board need not consider the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496, 502-03 (1992).